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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/806,816

07/06/2001

Meinhard Protz

10028.00

6006

7590 03/23/2007  
Leonard J Santisi  
Frommer Lawrence & Haug  
4660 La Jolla Village Drive  
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San Diego, CA 92122

EXAMINER

BECKER, DREW E

ART UNIT

PAPER NUMBER

1761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

03/23/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

~~If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS~~  
from the mailing date of this communication.

## Office Action Summary

### Application No.

09/806,816

### Applicant(s)

PROTZ ET AL.

### Examiner

Drew E. Becker

### Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) 5-8, 10 and 11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5-8, 10-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- 1 ☐ Certified copies of the priority documents have been received.
- 2 ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- 3 ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 5-8 and 10-11 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The application does not appear to disclose "partitions separating each receiving pocket from two adjacent receiving pockets". Figure 1 illustrates a space between each pocket and its respective partitions.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 5-8 and 10-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Torrez [Pat. No. 2,957,973].

Torrez teaches a stackable device comprising plural successively arranged parallel partitions forming plural receiving pockets at a lower end with V-shaped bottoms, an

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opening angle of more than 0°, and flexible wire loops (Figure 7, #46-48). Phrases such as “for handling and heat treating a plurality of rectangular bags or film packs” are merely preferred methods of using the claimed apparatus.

5. Claims 5-8 and 10-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Jones [Pat. No. 3,511,172].

Jones teaches a stackable device comprising plural successively arranged parallel partitions forming plural receiving pockets at a lower end with V-shaped bottoms, an opening angle of more than 0°, and flexible wire loops (Figure 2). Phrases such as “for handling and heat treating a plurality of rectangular bags or film packs” are merely preferred methods of using the claimed apparatus.

6. Claims 5-7 and 10-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Frederick [Pat. No. 4,121,510].

Frederick teaches a stackable device comprising plural successively arranged parallel partitions forming plural receiving pockets at a lower end with V-shaped bottoms, an opening angle of more than 0° (Figures 1-8). Phrases such as “for handling and heat treating a plurality of rectangular bags or film packs” are merely preferred methods of using the claimed apparatus.

7. Claims 5-7 and 10-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Brezinski [Pat. No. 3,994,213].

Brezinski teaches a stackable device comprising plural successively arranged parallel partitions forming plural receiving pockets at a lower end with V-shaped bottoms, an opening angle of more than 0° (Figure 1). Phrases such as “for handling and heat

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treating a plurality of rectangular bags or film packs" are merely preferred methods of using the claimed apparatus.

8. Claims 5-7 and 10-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Finnegan [Pat. No. 4,832,208].

Finnegan teaches a stackable device comprising plural successively arranged parallel partitions forming plural receiving pockets at a lower end with V-shaped bottoms, an opening angle of more than 0° (Figures 1-5). Phrases such as "for handling and heat treating a plurality of rectangular bags or film packs" are merely preferred methods of using the claimed apparatus.

9. Claims 5-7 and 10-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Brazda [Pat. No. 3,915,309].

Brazda teaches a stackable device comprising plural successively arranged parallel partitions forming plural receiving pockets at a lower end with V-shaped bottoms, an opening angle of more than 0° (Figures 1-3). Phrases such as "for handling and heat treating a plurality of rectangular bags or film packs" are merely preferred methods of using the claimed apparatus.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bauder [Pat. No. 2,249,265], Hogan [Pat. No. 4,559,869], and Loudon [Pat. No. 600,879] teach rack devices.

### ***Response to Arguments***

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11. Applicant's arguments with respect to claims 5-8 and 10-11 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 8am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*Drew Becker*  
DREW BECKER  
MARY EXAMINER  
3/21/07

<b>Notice of References Cited</b>	Application/Control No. 09/806,816	Applicant(s)/Patent Under Reexamination PROTZ ET AL.	
	Examiner Drew E. Becker	Art Unit 1761	Page 1 of 1

**U.S. PATENT DOCUMENTS**

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
*	A	US-2,249,265	07-1941	EDWARD BAUDER RAYMOND	211/11
*	B	US-4,559,869	12-1985	Hogan, Leroy	99/426
*	C	US-600,879	03-1898	Louden	211/153
*	D	US-3,915,309	10-1975	Brazdo, Florencia G.	211/85.4
*	E	US-3,994,213	11-1976	Brezinski, Adam	99/441
*	F	US-4,121,510	10-1978	Frederick, Louis J.	99/425
*	G	US-3,511,172	05-1970	JONES FINIS E	249/120
	H	US-			
	I	US-			
	J	US-			
	K	US-			
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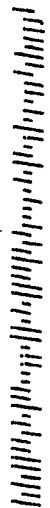
**FOREIGN PATENT DOCUMENTS**

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
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**NON-PATENT DOCUMENTS**

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
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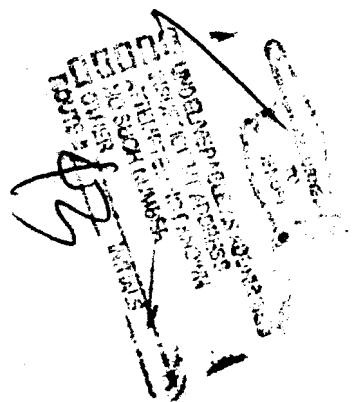
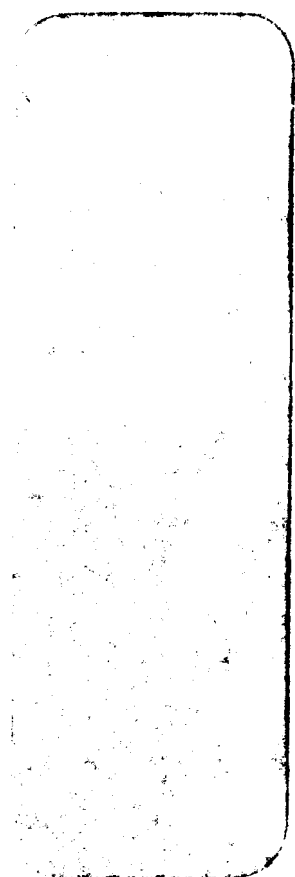
\*A copy of this reference is not being furnished with this Office action (See MPEP § 707 05(a) )  
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